

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 2141

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DATE	D-PG	OFFICIAL STATUS
03/01/2012	4069	Introduction and first reading Referred to Commerce and Consumer Protection
03/21/2012	4666a 4669 4670	Comm report: To pass as amended Second reading Author stricken Sparks

1.1

A bill for an act

1.2

relating to commerce; changing laws relating to debt settlement services

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agreements; amending Minnesota Statutes 2010, sections 332B.06, subdivisions

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2, 5, 8; 332B.07, subdivisions 1, 4; 332B.09, subdivision 1; 332B.10; 332B.13,

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subdivision 3; repealing Minnesota Statutes 2010, section 332B.09, subdivisions

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2, 3.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 2010, section 332B.06, subdivision 2, is amended to read:

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Subd. 2. **Actions prior to executing a written agreement.** No person may provide

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debt settlement services for a debtor or execute a debt settlement services agreement

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unless the person first has:

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(1) informed the debtor, in writing, that debt settlement is not appropriate for all

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debtors and that there are other ways to deal with debt, including using credit counseling

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or debt management services, or filing bankruptcy;

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(2) prepared in writing and provided to the debtor, in a form the debtor may keep,

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an individualized financial analysis of the debtor's financial circumstances, including

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income and liabilities, and made a determination supported by the individualized financial

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analysis that:

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(i) the debt settlement plan proposed for addressing the debt is suitable for the

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individual debtor;

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(ii) the debtor can reasonably meet the requirements of the proposed debt settlement

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services plan; and

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(iii) based on the totality of the circumstances, there is a net tangible benefit to the

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debtor of entering into the proposed debt settlement services plan; and

(3) provided, on a document separate from any other document, the total amount and an itemization of fees, ~~including any origination fees, monthly fees,~~ and settlement fees reasonably anticipated to be paid by the debtor over the term of the agreement.

Sec. 2. Minnesota Statutes 2010, section 332B.06, subdivision 5, is amended to read:

Subd. 5. **Required terms.** (a) Each debt settlement services agreement must contain on the front page of the agreement, segregated by bold lines from all other information on the page and disclosed prominently and clearly in bold print, the total amount and an itemization of fees, ~~including any origination fees, monthly fees,~~ and settlement fees reasonably anticipated to be paid by the debtor ~~over the term of~~ upon the successful achievement of settlement of the debts under the agreement.

(b) Each debt settlement services agreement must also contain the following:

(1) a prominent statement describing the terms upon which the debtor may cancel the contract as set forth in section 332B.07;

(2) a detailed description of all services to be performed by the debt settlement services provider for the debtor;

(3) the debt settlement services provider's refund policy;

(4) the debt settlement services provider's principal business address, which must not be a post office box, and the name and address of its agent in this state authorized to receive service of process; and

(5) the name of each creditor the debtor has listed and the aggregate debt owed to each creditor that will be the subject of settlement.

Sec. 3. Minnesota Statutes 2010, section 332B.06, subdivision 8, is amended to read:

Subd. 8. ~~**Funds held in trust**~~ **Holding funds prohibited.** ~~Debtor funds may be held in trust for the purpose of writing exchange checks for no longer than 42 days. If the registrant holds debtor funds, the registrant must maintain a separate trust account, except that the registrant may commingle debtor funds with the registrant's own funds, in the form of an imprest fund, to the extent necessary to ensure maintenance of a minimum balance, if the financial institution at which the trust account is held requires a minimum balance to avoid the assessment of fees or penalties for failure to maintain a minimum balance. A debt settlement services provider may not hold a debtor's funds or take any interest in or obtain any right to any account a debtor establishes, except that upon compliance with sections 332B.03, 332B.06, and 332B.09, a debt settlement services provider may seek and obtain written permission from the debtor to allow the debt settlement services provider to make an electronic and physical withdrawal of an~~

3.1 amount not to exceed the fees allowed under section 332B.09 and may assist in arranging
3.2 for payment to creditors pursuant to a settlement.

3.3 Sec. 4. Minnesota Statutes 2010, section 332B.07, subdivision 1, is amended to read:

3.4 Subdivision 1. **Debtor's right to cancel.** (a) A debtor has the right to cancel a debt
3.5 settlement services agreement without cause at any time upon ten days' written notice
3.6 to the debt settlement services provider.

3.7 (b) In the event of cancellation, the debt settlement services provider must, within
3.8 ten days of the cancellation, notify the debtor's creditors with whom the debt settlement
3.9 services provider is or has been, under the terms of the debt settlement agreement, in
3.10 communication, of the cancellation and immediately refund all fees paid by the debtor to
3.11 the debt settlement services provider that exceed the fees allowed under section 332B.09.

3.12 ~~(c) Upon cancellation, the debt settlement services provider must cease collection of~~
3.13 ~~any monthly fees beginning in the month following cancellation.~~

3.14 ~~(d) Notwithstanding paragraph (c), a debt settlement services provider is entitled to~~
3.15 ~~the full amount of the fees provided for in the debt settlement services agreement if the~~
3.16 ~~provider can show that:~~

3.17 ~~(1) the provider obtained a settlement offer from the creditor or creditors in~~
3.18 ~~accordance with the debt settlement services agreement;~~

3.19 ~~(2) the debtor rejected the settlement offer; or~~

3.20 ~~(3) within the period contemplated in the debt settlement services agreement, the~~
3.21 ~~debtor entered into a settlement agreement with the same creditor or creditors for an~~
3.22 ~~amount equal to or lower than the settlement offer obtained by the provider.~~

3.23 Sec. 5. Minnesota Statutes 2010, section 332B.07, subdivision 4, is amended to read:

3.24 Subd. 4. **Debt settlement services provider's right to cancel.** (a) A debt settlement
3.25 services provider may cancel a debt settlement services agreement with good cause upon
3.26 30 days' written notice to the debtor.

3.27 (b) Within ten days after the cancellation, the debt settlement services provider
3.28 must notify the debtor's creditors with whom the debt settlement services provider is or
3.29 has been, under the terms of the debt settlement services agreement, in communication,
3.30 of the cancellation.

3.31 ~~(c) Upon cancellation, the debt settlement services provider must cease collection of~~
3.32 ~~any monthly fees beginning in the month following cancellation.~~

3.33 Sec. 6. Minnesota Statutes 2010, section 332B.09, subdivision 1, is amended to read:

Subdivision 1. ~~Choice of fee structure~~ Fees permitted. ~~A debt settlement services provider may calculate fees on a percentage of debt basis or on a percentage of savings basis. The fee structure shall be clearly disclosed and explained in the debt settlement services agreement. A debt settlement provider may not request or receive payment of any fee or consideration for any debt settlement service until and unless:~~

(1) a debt is renegotiated, settled, reduced, or otherwise altered pursuant to a settlement agreement, or other such valid contractual agreement executed by the customer;

(2) the debtor has made at least one payment pursuant to that settlement agreement, or other valid contractual agreement between the debtor and the creditor or debt collector;

(3) to the extent that debts enrolled in a service are renegotiated, settled, reduced, or otherwise altered individually, the fee or consideration either:

(i) bears the same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debt was enrolled in the service; or

(ii) is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt; and

(4) any fees charged in accordance with clause (3), item (i), shall be limited to 25 percent of the debt enrolled.

Sec. 7. Minnesota Statutes 2010, section 332B.10, is amended to read:

332B.10 PROHIBITIONS.

(a) No debt settlement services provider shall:

(1) engage in any activity, act, or omission prohibited under section 332A.14;

(2) promise, guarantee, or directly or indirectly imply, infer, or in any manner represent that any debt will be settled prior to the presentation to the debtor of an offer by the creditors participating in the debt settlement services plan to settle;

(3) misrepresent the timing of negotiations with creditors;

(4) imply, infer, or in any manner represent that:

(i) fees, interest, and other charges will not continue to accrue prior to the time debts are settled;

(ii) wages or bank accounts are not subject to garnishment;

(iii) creditors will not continue to contact the debtor;

(iv) the debtor is not subject to legal action; and

(v) the debtor will not be subject to tax consequences for the portion of any debts forgiven;

(5) execute a power of attorney or any other agreement, oral or written, express or implied, that extinguishes or limits the debtor's right at any time to contract or communicate with any creditor or the creditor's right at any time to communicate with the debtor;

(6) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(7) state, imply, infer, or, in any other manner, indicate that entering into a debt settlement services agreement or settling debts will either have no effect on, or improve, the debtor's credit, credit rating, and credit score;

(8) challenge a debt without the written consent of the debtor;

(9) make any false or misleading claim regarding a creditor's right to collect a debt;

(10) falsely represent that the debt settlement services provider can negotiate better settlement terms with a creditor than the debtor alone can negotiate;

(11) provide or offer to provide legal advice or legal services unless the person providing or offering to provide legal advice is licensed to practice law in the state;

(12) misrepresent that it is authorized or competent to furnish legal advice or perform legal services; and

(13) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification from the creditor that the payment is in full settlement of the debt or part of a payment plan that upon completion will lead to full settlement of the debt.

(b) Nothing in this section shall be construed to interfere with the obligation of a debt settlement services provider to provide disclosures to the debtor as required under this chapter and Code of Federal Regulations, title 16, section 310.3.

Sec. 8. Minnesota Statutes 2010, section 332B.13, subdivision 3, is amended to read:

Subd. 3. **Injunctive relief.** (a) A debtor may sue a debt settlement services provider for temporary or permanent injunctive or other appropriate equitable relief to prevent violations of any provision of this chapter. A court must grant injunctive relief on a showing that the debt settlement services provider has violated any provision of this chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to prevail on allegations that the debt settlement services provider violated any provision of this chapter. A bona fide clerical, unintentional error occurring despite reasonable procedures adopted and maintained to avoid the error does not constitute a violation.

6.1 (b) A debtor may sue a lead generator for temporary or permanent injunctive or other
6.2 appropriate equitable relief to prevent violations of section 332B.11. A court must grant
6.3 injunctive relief on a showing that the lead generator has violated section 332B.11, or in
6.4 the case of a temporary injunction, on a showing that the debtor is likely to prevail on
6.5 allegations that the lead generator violated section 332B.11.

6.6 Sec. 9. **REPEALER.**

6.7 Minnesota Statutes 2010, section 332B.09, subdivisions 2 and 3, are repealed.

6.8 Sec. 10. **EFFECTIVE DATE.**

6.9 Sections 1 to 9 are effective for debt settlement services agreements entered into on
6.10 or after August 1, 2012.

332B.09 FEES; WITHDRAWAL OF CREDITORS; NOTIFICATION TO DEBTOR OF SETTLEMENT OFFER.

Subd. 2. **Fees as a percentage of debt.** (a) The total amount of the fees claimed, demanded, charged, collected, or received under this subdivision shall be calculated as 15 percent of the aggregate debt. A debt settlement services provider that calculates fees as a percentage of debt may:

(1) charge an origination fee, which may be designated by the debt settlement services provider as nonrefundable, of:

- (i) \$200 on aggregate debt of less than \$20,000; or
- (ii) \$400 on aggregate debt of \$20,000 or more;

(2) charge a monthly fee of:

- (i) no greater than \$50 per month on aggregate debt of less than \$40,000; and
- (ii) no greater than \$60 per month on aggregate debt of \$40,000 or more; and

(3) charge a settlement fee for the remainder of the allowable fees, which may be demanded and collected no earlier than upon delivery to the debt settlement services provider by a creditor of a bona fide written settlement offer consistent with the terms of the debt settlement services agreement. A settlement fee may be assessed for each debt settled, but the sum total of the origination fee, the monthly fee, and the settlement fee may not exceed 15 percent of the aggregate debt.

(b) The collection of monthly fees shall cease under this subdivision when the total monthly fees and the origination fee equals 40 percent of the total fees allowable under this subdivision.

(c) In no event may more than 40 percent of the total amount of fees allowable be claimed, demanded, charged, collected, or received by a debt settlement services provider any earlier than upon delivery to the debt settlement services provider by a creditor of a bona fide written settlement offer consistent with the terms of the debt settlement services agreement.

Subd. 3. **Fees as a percentage of savings.** (a) The total amount of the fees claimed, demanded, charged, collected, or received under this subdivision shall be calculated as 30 percent of the savings actually negotiated by the debt settlement services provider. The savings shall be calculated as the difference between the aggregate debt that is stated in the debt settlement services agreement at the time of its execution and total amount that the debtor actually pays to settle all the debts stated in the debt settlement services agreement, provided that only savings resulting from concessions actually negotiated by the debt settlement services provider may be counted. A debt settlement services provider that calculates fees as a percentage of savings may:

(1) charge an origination fee, which may be designated by the debt settlement services provider as nonrefundable, of:

- (i) \$300 on aggregate debt of less than \$20,000; or
- (ii) \$500 on aggregate debt of \$20,000 or more;

(2) charge a monthly fee of:

- (i) no greater than \$65 on aggregate debt of less than \$40,000; and
- (ii) no greater than \$75 on aggregate debt of \$40,000 or more; and

(3) charge a settlement fee for the remainder of the allowable fees, which may be demanded and collected no earlier than upon delivery to the debt settlement services provider by a creditor of a bona fide, final written settlement offer consistent with the terms of the debt settlement services agreement. A settlement fee may be assessed for each debt settled, but the sum total of the origination fee, the monthly fee, and the settlement fee may not exceed 30 percent of the savings, as calculated under paragraph (a).

(b) The collection of monthly fees shall cease under this subdivision when the total of monthly fees and the origination fee equals 50 percent of the total fees allowable under this subdivision. For the purposes of this subdivision, 50 percent of the total fees allowable shall assume a settlement of 50 cents on the dollar.

(c) In no event may more than 50 percent of the total amount of fees allowable be claimed, demanded, charged, collected, or received by a debt settlement services provider any earlier than upon delivery to the debt settlement services provider by a creditor of a bona fide, final written settlement offer consistent with the terms of the debt settlement services agreement.